

Appl. No. 10/004,742
Amdt. Dated 24 January 2005
Reply to Office Action of 27 December 2004

REMARKS

As discussed with the Examiner by telephonic conference, Applicant respectfully requests reconsideration of the findings of anticipation in light of U.S. Patent 5,250,313 issued to Giguere with regards to Claim 1 as amended herein, and Claims 2 -13 dependent therefrom. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. MPEP § 2131. A rejection based on 35 U.S.C. 102(b) can be overcome by persuasively arguing that the claims are patentably distinguishable from the prior art. MPEP § 706.02(b).

Applicant has amended Claim 1 in conformance with the telephonic conference with the Examiner and respectfully offers that the prior art does not teach all of such elements. The methodological differences in the inventions of the cited patent and Claim 1 of the instant application result in different operation and output. The Examiner held:

Giguere discloses a process of degermination corn including tempering said corn, pre-breaking same (wherein it is considered that a polishing action would take place, particular since it is required that the germ in said treatment still remain whole), tempering same, and then treating same through a set of rollers which are would inherently cause a step of friction due to the separation between same (avoidance of size reduction of the germ, col. 11, lines 40-48) and the difference in speed between the rollers (col. 12, lines 4-9)

Office Action, page 2. Claim 1 (currently amended) of the instant application now provides:

A process for de-germinating corn kernels, said corn kernels having bran, endosperm and germ, comprising, in the sequence indicated:
a first tempering step;
a polishing step for removing said bran from said corn kernels;
a second tempering step; and
a friction step.

Claim 1 as amended is not anticipated as Giguere's '313 patent does not teach a polishing step

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for removal of bran and as Claim 1 does not contain the whole-kernel pulverizing step of Giguere's '313 patent.

I. Claim 1 is not anticipated as the polishing step is not found Giguere's '313 patent, which instead contains a whole-kernel pulverizing step.

A. Giguere's '313 patent teaches pre-breaking of the kernel containing bran, endosperm and germ.

Giguere's '313 patent teaches pre-breaking of the kernel, composed of bran, endosperm and germ, by impact crushing and intended destruction of the whole kernel:

The prebreak mill may be any suitable type that breaks the grain by subjecting it to a crushing action that breaks the endosperm while preferably although not necessarily maintaining a substantial amount of the germ in a whole condition....The crushing action should fracture the grain into at least four and preferably six or more major pieces.

Giguere's '313 patent, Col. 10, Lines 38-41, 43-45.

B. Claim 1 is not anticipated as the polishing step for bran removal is not found Giguere's '313 patent.

Claim 1 is not anticipated as the polishing step for bran removal is not found Giguere's '313 patent. The polishing step of Claim 1 of the instant application, which the Examiner has analogized to the pre-breaking step, is not found in Giguere's '313 patent. The polishing step for bran removal of Claim 1 of the instant application is explained by the specification as:

The corn kernels are next introduced into a polishing machine 400, which consists of a rotating eccentric rotor 410 surrounded by a polygonal perforated metal screen 412. As the clearance between the screen 412 and the rotor 410 changes during each rotation, the corn kernels experience alternating cycles of compression and relaxation, producing an effective rubbing action. The polishing machine 400 ruptures the softened bran 102, which softened bran 102 leaves the milling chamber through the perforations in the screen 412.

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Application, Page 7, Lines 18-24. Instead of producing a polishing action for bran removal, Giguere's pre-breaking step breaks the grain or kernel into at least four pieces without removing the bran from the exterior of the kernel. Giguere's '313 patent, Col. 10, Lines 38-41, 43-45.

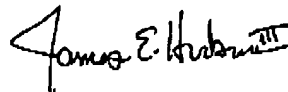
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III. Conclusion

Claim 1 as amended of the instant application should be allowed. The polishing step for bran removal of Claim 1 as amended is not found in Giguere's '313 patent.

In light of such differences, Claim 1 as amended of the instant application is not anticipated by Giguere's '313 patent. Applicant therefore respectfully requests that a Notice of Allowance be issued in this case.

Respectfully submitted,



James E. Hudson III
Registration No. 41,081

Keeling Hudson LLC
Post Office Box 70103
Houston, Texas 77270
(713) 680-1447
(713) 680-8567 Fax

KEELING HUDSON L.L.C.

P.O. BOX 70103

HOUSTON, TEXAS 77270

TELEPHONE: (713) 680-1447

FACSIMILE: (713) 680-0726

FACSIMILE TRANSMITTAL SHEET

TO

Anthony Weier
GAU 1761
USPTO
703.872.9306 Fax

FROM:

JAMES E. HUDSON III

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RE:

Response to Office Action of 27 December 2004 Enclosed

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